

RESOLUTION NO. 14-009

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THE CITY COUNCIL ADOPTS ZONING AMENDMENT NO.
ZA14-0001 TO INCLUDE DEFINITIONS FOR ELECTRONIC SMOKING DEVICE
AND HEAD/SMOKE/TOBACCO SHOP AND MAKE OTHER RELATED
AMENDMENTS TO THE MILPITAS ZONING ORDINANCE**

WHEREAS, on January 27, 2014, the Planning Division initiated a process to amend the Milpitas Zoning Ordinance to create definitions for tobacco shop and for other tobacco related uses.

WHEREAS, the Planning Division has received a number of inquiries about the permitted and conditionally permitted uses for tobacco stores, electronic cigarettes, and other similar related uses. Specifically, staff has received inquiries from retail businesses regarding the sale of electronic cigarettes, nicotine vaporizers and similar devices. Staff has found that that Zoning Ordinance is unclear on the regulation and classification of these types of uses.

WHEREAS, in order to clarify the intent and regulation of these types of uses, the Planning Division is proposing an amendment to better define and classify tobacco and similar uses.

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under CEQA Guidelines Section 15601(b)(3) in that there is no potential for this project to cause a significant effect on the environment.

WHEREAS, on February 26, 2014 the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Commission determines this project is exempt under CEQA Guidelines Section 15601(b)(3) in that there is no potential for this project to cause a significant effect on the environment.

Section 3: Zoning Amendment (Section XI-10-57.02(G)(3)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Zoning Amendment No. ZA14-0001.

1. *The proposed amendment is consistent with the General Plan.*

The project is consistent with this finding because the creation of definitions for these uses furthers the General Plan goal of promoting the health, safety and general welfare of Milpitas residents as further described in the Recitals section of the proposed Ordinance. Definitions of use and classification of such uses promotes the orderly and safe development of the City.

2. *The proposed amendment will not adversely affect the public health, safety and welfare.*

As described in detail in the Recitals section of the proposed Ordinance, the project is consistent with this finding because regulating tobacco related uses promotes public health and classifies these types of similar uses. This allows the City to better regulate these uses based on changing technology and new methods of smoking and inhaling nicotine and or other substances.

Section 6: The Planning Commission of the City of Milpitas hereby adopts Resolution No 14-009 recommending the City Council adopts an amendment to the Zoning Ordinance defining Electronic Smoking Device and Head/Smoke/Tobacco Shops and other related amendments – (Zoning Amendment No. ZA14- ***based on the above findings incorporated herein.***

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on February 26, 2014:

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on February 26, 2014 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Gurdev Sandhu				

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Garry Barbadillo				
Demetress Morris				
Hon Lien (Alternate)				